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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRIS LOHM,

Defendant.

CR. NO. S-93-0224 EJG

ORDER DISMISSING 2255 MOTION

On December 26, 2007, defendant filed a motion to vacate, set aside or correct his sentence, pursuant to 28 U.S.C. § 2255, seeking an order restructuring his federal sentence to run "coterminous with" instead of "concurrent to" a Florida state sentence he was serving at the time. The federal sentence from which defendant sought relief was imposed June 26, 1995. The amended judgment of conviction was filed July 11, 1995, more than twelve years prior to date of this post-conviction motion. Therefore, if the instant motion were construed as a § 2255 motion, it would be time-barred by that statute's one year limitations period.

1 Noting that it was the intent of the parties and the court
2 at sentencing for defendant to serve his federal sentence in
3 federal custody, and recognizing that the court retains
4 discretion to recharacterize a motion if appropriate to afford
5 relief, the court issued an order January 28, 2008 directing the
6 United States Attorney to file a response. No response was ever
7 formally filed, although a declaration from an employee of the
8 Bureau of Prisons was delivered to the court in March of 2008.
9 The declaration and its attendant attachments purport to explain
10 that the intent of the parties and the undersigned in the instant
11 federal case cannot be effectuated because the State of Florida
12 will not relinquish custody of defendant until the termination of
13 his state sentence, projected to be December 30, 2008.

14 Based on the foregoing, the court determines that the type
15 of relief defendant seeks cannot be afforded by this court.
16 Accordingly, the motion to vacate, set aside or correct sentence
17 is DISMISSED for lack of jurisdiction, as time-barred. Even were
18 the court able to reach the merits, a review of the Bureau of
19 Prisons electronic database reveals that defendant was released
20 from federal custody February 18, 2009, thereby mooted his
21 requested relief.

22 IT IS SO ORDERED.

23 Dated: March 25, 2009

24 /s/ Edward J. Garcia
25 EDWARD J. GARCIA, JUDGE
26 UNITED STATES DISTRICT COURT